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October 30, 2003
DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: December 13, 2002

Case Number: TSO-0014

This Decision concerns the eligibility of xxxxxxxxxxxxxxxxx (the individual) for continued access authorization 1/ under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." Based on the record before me, I have determined that the individual's access authorization should not be restored.

I. Background

For years, the individual has been employed by a DOE contractor in a position that requires her to maintain a security clearance. In August 2001, the individual reported to the local DOE security office that she had filed for Chapter 7 bankruptcy as a result of her gambling activities. Because this information raised security concerns, the DOE conducted a Personnel Security Interview (PSI) with the individual. Subsequently, the DOE examined the individual's financial situation, and referred the individual to a board-certified psychiatrist (DOE consultant-psychiatrist) for a mental evaluation.

On June 18, 2002, the DOE consultant-psychiatrist examined the individual and determined that she has an illness or mental condition, Pathological Gambling, which causes or may cause a significant defect in her judgment or reliability. Shortly thereafter, the DOE suspended the individual's security clearance and obtained authority from the Director of the Office of Safeguards and Security to initiate this administrative review proceeding.

On September 17, 2002, the DOE issued a Notification Letter to the individual identifying the individual's gambling activities, mental illness, and financial difficulties as derogatory information that cast doubt on her continued eligibility for access authorization. According to the DOE, the

1/ Access authorization is defined as an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material. 10 C.F.R. § 710.5(a).

derogatory information fell within the purview of 10 C.F.R. §§ 710.8(h) and (l) (Criteria H and L respectively). 2/

Upon receipt of the Notification Letter, the individual filed a request for a hearing. The DOE transmitted the individual's hearing request to the Office of Hearings and Appeals (OHA) Director who appointed me as Hearing Officer in this case. I convened a hearing in this matter within the time frame prescribed by the regulations governing the administrative review process. *See* 10 C.F.R. § 710.25(g). At the hearing, the DOE called two witnesses: a DOE personnel security specialist (via telephone) and the DOE consultant-psychiatrist. The individual offered her own testimony and that of seven other witnesses: two supervisors, four co-workers and a certified addiction counselor. The DOE submitted 30 exhibits, and the individual tendered five.

II. Standard of Review

The applicable DOE regulations state that “[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all the relevant information, favorable or unfavorable, as to whether the granting or continuation of access authorization will not endanger the common defense and security and is clearly consistent with the national interest.” 10 C.F.R. § 710.7(a). In resolving questions about the individual's eligibility for access authorization, I must consider the relevant factors and circumstances connected with the individual's conduct. These factors are set out in § 710.7(c):

the nature, extent, and seriousness of the conduct; the circumstances surrounding his conduct, to include knowledgeable participation; the frequency and recency of the conduct; the voluntariness of participation; the age and maturity of the individual at the time of the conduct; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; and the likelihood of continuation or recurrence.

A DOE administrative review proceeding under 10 C.F.R. Part 710 is authorized when the existence of derogatory information leaves unresolved questions about an individual's eligibility for access authorization. A hearing is “for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization.” 10 C.F.R. § 710.21(b)(6). Once DOE has presented derogatory information affecting an individual's eligibility for access authorization, the individual must come forward with evidence to convince the DOE that restoring his access authorization “will not endanger the common defense and security and is clearly consistent with the national interest.”

2/ Criterion H concerns information that a person “has an illness or mental condition . . . which, in the opinion of a psychiatrist . . . causes, or may cause, a significant defect in judgment or reliability.” 10 C.F.R. § 710.8(h). Criterion L concerns information that the individual “has engaged in unusual conduct or is subject to circumstances which tend to show that she is not honest, reliable or trustworthy; or which furnishes reason to believe that she may be subject to pressure, coercion, exploitation or duress which may cause him to act contrary to the best interests of the national security.” 10 C.F.R. § 710.8(l).

10 C.F.R. § 710.7(a). *See, e.g., Personnel Security Hearing*, Case No. VSO-0013, 24 DOE ¶ 82,752 at 85,511 (1995), and cases cited therein. For the reasons discussed below, I find that the individual's access authorization should not be restored.

III. Findings of Fact

Most of the facts in this case are not in dispute. The individual has a history of gambling that has continued for the last four years. According to the individual, she initially began gambling two to three times a month, but by the year 2000, she gambled three to five times a week and would stay at the casinos anywhere from two hours to ten hours at a time. DOE Exhibit 3-1. The individual estimates that she could lose up to \$500 if she was gambling for a ten hour period of time. *Id.* The individual stated that gambling affected both her work and her home life. She stated that she borrowed money from her family to gamble, but "never considered committing an illegal act to gain money to gamble." *Id.* In 2001, the individual's bills exceeded her take-home pay. She estimates that a \$70,000 debt was cleared by bankruptcy. As a result of her gambling problem, the individual voluntarily placed her name on the state Disassociated Person List, which makes it an illegal act to gamble at a casino.

In June 2002, the individual underwent a psychiatric evaluation by a DOE consultant-psychiatrist who diagnosed the individual as suffering from pathological gambling based upon diagnostic indicators established in the American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders (DSM-IV-TR). The DOE consultant-psychiatrist opined that the individual's mental condition may cause a significant defect in her judgment and reliability. For this reason, the DOE consultant-psychiatrist advised that the individual abstain altogether from gambling. Despite the DOE consultant-psychiatrist's advice, the individual continued to gamble, although to a much lesser extent, as late as April 2003. Hearing Transcript (Tr.) at 93.

IV. Analysis

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c). After due deliberation, I have determined that the individual's access authorization should not be restored at this time. I cannot find that such restoration would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings I make in support of this decision are discussed below.

A. Pathological Gambling

The facts enumerated above establish unequivocally that the DOE properly relied on Criterion H as a basis for suspending the individual's access authorization. It was reasonable for the DOE to conclude that the individual's gambling addiction could impair her judgment and reliability and prevent the individual from safeguarding classified matter or special nuclear material. A finding of

derogatory information does not, however, end the evaluation of the evidence concerning the individual's eligibility for access authorization. *See Personnel Security Hearing*, Case No. VSO-0154, 26 DOE ¶ 82,794 (1997), *aff'd*, *Personnel Security Review*, Case No. VSA-0154, 27 DOE ¶ 83,008 (1998) (*affirmed* by OSA, 1998). In this case, the individual suggests that her efforts to date to conquer her pathological gambling should mitigate the security concerns set forth in the Notification Letter associated with Criterion H.

1. Rehabilitation and Reformation

Since receiving the Notification Letter in September 2002, the individual states that she has taken a number of steps to address her gambling problems. As stated above, the individual placed her name on the state Disassociated Person List. *Indiv. Exhibit A*. By placing her name on this list, the individual acknowledged that she is a problem gambler and that she is unable to gamble responsibly. As a participant on the Disassociated Person List, she is to refrain from visiting any state casinos. If the individual fails to honor this agreement she will be referred to local law enforcement officials for arrest as a trespasser. *Id.* As a result of her participation on this list, the individual met a certified addictions counselor (addiction counselor) whom she meets with one hour per week and with whom she attends group sessions one and one-half hours per week. In addition, the individual states that her gambling was an escape from the consequences of an extramarital affair she had. *Tr.* at 56. She states that she is no longer in that extramarital affair and is working on her relationship with her husband. *Id.* at 97. Most notably, the individual asserts that she has markedly reduced her gambling and has maintained her participation in a treatment program. While she acknowledges that she has had four one-day lapses in the process of her rehabilitation, the last one occurring in April 2003, she states that they were primarily nominal bets (winning the "pot money" made during her bowling tournaments) and not casino gambling. *Id.* at 78. She asserts that the issues that triggered her gambling have been resolved and that she is committed to continuing her therapy with her addiction counselor. *Id.* at 97.

The individual's addiction counselor, who holds a master's level certification for chemical addictions and special certification and training for gambling addiction, testified that she has been working with the individual in a clinical setting for about two and one-half years. *Id.* at 63. She reiterated that she began working with the individual on a weekly basis for about a year and currently facilitates a group session which includes the individual. *Id.* According to the addiction counselor, her counseling program may be compared to Gamblers Anonymous, "the clinical intervention that I provide is . . . I usually . . . identify triggers, create safety nets, . . . educate the family members on ways that everyone wins and everyone loses with the gambling . . . as long as one is winning there is not a problem, but when the losing begins, then we have a problem." *Id.* at 65. She opined that the individual's gambling has been triggered by multiple stressors in her life including unresolved abuse from childhood, family history of alcoholism and gambling, her relationship with her husband and unresolved anger. *Id.* at 66-67. She further stated that the individual has changed her life with regard to gambling. According to the addiction counselor, there have only been four one-day episodes of gambling over a period of two years. She also noted that the monetary involvement has been intensely diminished. *Id.* at 68. "When you think that she was gambling everyday for four

years, and in the past two years she has gambled four times, that's considerable diminishment. She is not adding to the debt, debt is being reduced." *Id.* at 65.

The individual's addiction counselor disagreed with the DOE consultant-psychiatrist's assessment of the individual. Although she believes the individual is a gambler and suffers from depression, she also believes "she is continuing to increase the quality of her recovery with gambling." *Id.* The addiction counselor further stated that she does not believe the individual is a threat to DOE. However, with regard to the DOE consultant-psychiatrist's prognosis of the individual, the addiction counselor agreed that a period of two years of abstinence from gambling would be a "nice goal." *Id.* at 71. She further stated that she did not believe the individual is rehabilitated at this time. The addiction counselor reiterated that the individual has made and continues to make great strides on the road to recovery. When asked how she characterizes the four one-day lapses the individual has had, the addiction counselor stated that "the fact that they did not continue into multiples, . . . the fact that they did not involve the duration and the amount of money that they had in the past" is good. *Id.* at 72.

The DOE consultant-psychiatrist, who is board-certified in a number of disciplines including psychiatry, testified after listening to the testimony of all the other witnesses at the hearing. According to the DOE consultant-psychiatrist, the individual suffers from pathological gambling. He believes the individual is a very likable person who has been forthcoming with him. The DOE consultant-psychiatrist stated that when he met with the individual during a one and one-half hour evaluation, he believed she had a gambling problem because over the last three to four years the number of visits to the [gambling] venues increased, "the amount of money gambled increased and it became more and more part of her life." *Id.* at 90. He agreed with the individual's addiction counselor that the individual's bowling league gambling does not appear to have increased in amount. *Id.* at 92. However, he believed the individual exercised poor judgment having gone into a casino since the summer of 2002, "knowing that this was going to happen, this hearing, and that your gambling was being scrutinized by DOE . . . I must say that I'm surprised that there have been incidences since then." *Id.* After listening to the testimony during the hearing, the DOE consultant-psychiatrist stated that he was most concerned with the April 2003 incident. He stated that he would be more flexible than suggesting two years of abstinence, which he outlined in his written report, if the individual had documented that she has not gone into a casino at all since his interview with him. He opined, however, that two years of total abstinence combined with counseling would be necessary for reformation and rehabilitation.

2. Analysis of Evidence Relating to Rehabilitation and Reformation

The record is clear that the individual is taking positive steps to arrest her gambling addiction through her participation in counseling and the placement of her name on the Disassociated Person List. I find her actions in this regard to be highly commendable. After listening to the testimony of the individual's addiction counselor and the DOE consultant-psychiatrist at the hearing, I understand the severity of the individual's gambling addiction and appreciate the commitment and self-discipline one needs to overcome a compulsive behavior that is fueled by stressors in one's life. I also applaud the individual's acknowledgement of her gambling problems to the local DOE security

office. Her actions in this regard show her honesty and also marked the first step in her recovery efforts, i.e., a recognition that she needed professional assistance to overcome her addiction.

Despite these positive factors, I am unable to conclude that the individual is rehabilitated from her pathological gambling. In assessing the individual's rehabilitative efforts to date, I am especially cognizant that the individual has had four episodes of gambling, although diminished, since her evaluation by the DOE consultant-psychiatrist and despite knowing that her gambling was being scrutinized by DOE. The element of time is critical in this case. Although both the DOE consultant-psychiatrist and the addiction counselor believe that the individual has made tremendous strides on the road to rehabilitation from her gambling addiction, they both agree that the individual should maintain two years of total abstinence combined with counseling in order to be considered rehabilitated.

Based on the foregoing, I find that the weight of the evidence indicates that the individual is not yet rehabilitated or reformed from her pathological gambling. I find, therefore, that her efforts to date are not sufficient to mitigate the security concerns relating to Criterion H as set forth by the DOE in the Notification Letter.

B. Financial Issues Relating to the Individual's Gambling

The record establishes that the individual's gambling has had a negative impact on her finances. Financial problems resulting from a person's gambling are precisely the conduct or circumstances that "furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of national security" under Criterion L. *Personnel Security Hearing*, Case No. VSO-0041, 25 DOE ¶ 82,775 (1995), *aff'd*, *Personnel Security Review*, VSA-0041, 25 DOE ¶ 83,005 (1996) (*affirmed* by OSA, 1996). While it may be true that the individual has not, to date, succumbed to any pressure, coercion, or exploitation because of her financial difficulties, the risk is too great to ignore. Given the facts of this case, I find that the DOE was clearly justified in invoking Criterion L when it suspended the individual's security clearance.

To mitigate the DOE's Criterion L concerns, the individual states because she is now on the road to recovery from her gambling and has dealt with other stressors in her life, her financial affairs are now in order. At the hearing, the individual submitted documents to support this assertion, which included her credit reports. See Individual Exhibit D.

Previous opinions issued by OHA Hearing Officers have held that once there is a pattern of financial irresponsibility, the individual must demonstrate a sustained, new pattern of financial responsibility for a period of time that is sufficient to demonstrate that a recurrence of the past pattern is unlikely. *Personnel Security Hearing*, Case No. VSO-0240, 26 DOE ¶ 82,790 (1999); *Personnel Security Hearing*, Case No. VSO-0108, 26 DOE ¶ 82,764 at 85,699 (1996). After reviewing all of the evidence in this record, it appears that the individual has discharged most of her financial obligations through bankruptcy and has taken steps to maintaining financial responsibility. However, I am unable to find that she has allayed all the Criterion L concerns. Sufficient time has simply not passed

for me to predict whether the individual will remain financially responsible, or whether she will resume her past pattern of financial irresponsibility. I am particularly mindful that the individual's financial stability is intimately tied to her recovery from compulsive gambling. Until the recovery process is complete, it would be difficult for me to find that the individual has mitigated the DOE's security concerns attendant to her financial irresponsibility.

V. Conclusion

For the reasons set forth above, I find that there is sufficient derogatory information in the possession of the DOE that raises serious security concerns under Criteria H and L as to the individual's access authorization. I find further that the individual has failed to bring forth sufficient evidence to mitigate the DOE's security concerns concerning her impulse control disorder and her financial irresponsibility. Accordingly, after considering all the relevant information, favorable and unfavorable, in a comprehensive and common-sense manner, I conclude that the individual has not yet demonstrated that restoring her access authorization would not endanger the common defense and would be clearly consistent with the national interest. I therefore find that the individual's access authorization should not be restored. The individual may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Kimberly Jenkins-Chapman
Hearing Officer
Office of Hearings and Appeals

Date: October 30, 2003